U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for June 2, 2023

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NONPRECEDENTIAL COURT DECISIONS

Rosario-Fabregas v. Department of the Army, [2022-2280](#) (Fed. Cir. May 30, 2023) (MSPB Docket Nos. NY-0752-10-0127-X-2, NY-0752-10-0127-X3):

The court vacated and remanded the Board's August 1, 2022 consolidated decision dismissing the petitioner's second petition for enforcement (PFE) from 2013 and third PFE from 2014. The protracted compliance proceedings concern the appellant's allegations of agency noncompliance with the Board's November 30, 2011 final decision reversing his removal, reinstating him, and ordering an award of back pay and other benefits. As relevant here, in considering the second and third PFEs, the administrative judge found that an identified coding issue in the cancellation Standard Form (SF) 50 was not a basis for finding noncompliance but that the agency nonetheless was in partial noncompliance with the 2011 decision, and she ordered the agency to take the following actions: (1) to identify and explain the correct back pay amount, and (2) to confirm the correct allocations on the back pay earnings to the Social Security Administration (SSA). The matters were referred to the Board to obtain compliance, which the Board ultimately found based on the agency's submissions and because the petitioner had not identified any specific inaccuracies with the back pay amount or SSA allocations. On review, the court agreed with the findings as to the SF-50; however, it held that the Board's other findings were not supported by substantial evidence. The agency had submitted "numerous possible back-pay numbers and numerous possible SSA allocations" over the course of the proceedings without explanation for the inconsistencies. Rather than placing the onus on the

petitioner to identify the particular errors, the court remanded the matter to the Board to ensure the agency fulfilled its obligation to show it paid the correct back pay amount and to correct any errors in the SSA allocations.